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CHAPTER IX

MARRIAGE AND THE SOCIAL STRUCTURE

Mate selection and marriage exchanges as reflections of the social structure—social and psychological aspects of nuptial rites—the handling of the themes of sex and concubinage, of barrenness and premature death in the marriage situation.

FROM mummeries and masks we turn to marriage and *munyoalo* (bride-price). The secrecy of the *digoma* contrasts strangely with the publicity of marriage ceremonial; but they are both cultural devices for dealing with cultural problems. The hidden forces in nature and man are intractable and can be brought under control only by rephrasing them as mysteries, the fear of which is overcome by man-made initiations and cults. Marriage is also an initiation, but its complicated ceremonial is concerned chiefly with laying the concrete foundations of the social structure. This is a gigantic and delicate task, almost beyond the capacity of the culture. Fortunately, we can see more clearly than in the case of the *digoma* how this task has been accomplished, but unfortunately we shall have space merely to glance at the larger features instead of examining closely the exquisite workmanship and superlative ornamentation.

It is not easy to appreciate the immense implications of marriage among the Lovedu. For one thing, the concomitant cattle exchanges transform it into something wholly unlike the contract between two individuals of different sex among us. The fact that a Lovedu woman may, just like a man, marry a wife, warns us that we are in a world entirely different from our own. The elaborate ceremonial reflects the enormous importance of marriage and of the network of links that are forged by the cattle that pass. The bonds that are created in this manner can be put to all manner of uses. They form the basis of the *munyoalo* ring of exchanges. They hold together the political system, incorporating as they do foreign elements in the tribe, and casting the net of relationship over the whole country. Marriage and *munyoalo* provide the pattern even for dealing with homicide: the murder is not avenged; by handing over cattle or by giving his daughter, the murderer and his relatives become enmeshed in the network of exchanges; he is transformed from criminal to kinsman and a potential blood feud is turned into the reciprocal relations between the people of the bride and those of the groom. A man threatened with starvation when his crops have failed and his cattle have died can, by linking himself to the *munyoalo* ring of another, save both himself and his family.

But the most startling proof of the importance of Lovedu marriage lies therein that the tribunals of the *khoro*—in other words, the organization that corresponds to our legal system—are mainly concerned with marriage and *munyoalo* tangles; the *raison d'être* of the *khoro* and its law appear to be the preservation of the marriage system. The whole genius of *khoro* law and of *khoro* judicial proceedings is the genius of resolving tensions within the gigantic superstructure built upon marriage and its

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696 The procedure to-day involved in witchcraft cases can be set into motion and these cases may be settled by district heads. In short, set rules as to competence do not exist and district heads are left to cope with as much as they can manage.

576 627 561 A brief discussion of some quasi-judicial processes will enable us to appreciate better, as it will introduce us to the procedure and spirit of the *khoro*. Firstly, there is the method by which especially old women deal with disrespectful or insulting behaviour of younger women. Should one or more young women play a practical joke upon or be disrespectful to an old woman, or playfully 'dance' an infant child, even their own, or prematurely try to make it sit up or walk or scold or beat it, in the presence of the grandmother or of an old woman, their behaviour is regarded as insulting. The conception is that old women in their role as midwives, rather than young mothers, have brought children into the world and the old, not the young, are the guardians of the babes. If one young woman arrogates to herself rights and privileges which belong to the old women, the latter are entitled to take suitable action. The insulted old woman reports to a few of her age-mates and in consultation they decide to punish the age-mates of the young woman resident in the same territorial unit—for example, a district. There is neither 'trial' nor tribunal. The punishment consists of three elements: the age-mates of the young women (say all those who have one baby) must brew beer with which to effect a reconciliation with the older women; in a rite accompanying the beer drink and resembling that used at initiations, the oldest woman canes her immediate junior, who in turn canes the next, and so on, including the culprits; and, finally, the culprits are read a lesson as to the iniquity of being disrespectful to their elders.

One day three young married women, in circumstances that implied disrespect, sent three old women a tiny quantity of snuff. The older women immediately fined the younger and vicariously all their age-mates living in the Christian settlement, for they were all residents there. They were told to grind snuff and restitute their wrong with beer. Five days later the twelve young married women of the settlement came to the house of the oldest woman, bringing large quantities of nuts, light beer, pumpkins, and other food; their husbands, in addition, sent a large tin of snuff and these 'gifts' were divided among the old women. Then followed the rite and the warning. On another occasion all the young mothers of a district were fined because one of them had 'danced' its baby in the presence of its grandmother. Likewise, it is said, though we have not seen a case, that the old women may fine a young father and his age-mates, if he forgets their privileges in regard to babies. But we cannot speak of regimental courts, the age-grades are not determined by the 'schools', the responsibility is territorial, and the punishment is 'beer of reconciliation' (largely replaced by food among Christians).

627 691 The second procedure, that called *ku khumelana* (to beg pardon, to reconcile), has an enormous province and a profound significance, not only for legal arrangements, but in the whole culture. The procedure uses a *mukhumedi*, the emissary who intervenes on behalf of one of the parties to beg the pardon of the other. Its essence is not humiliation of

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the one, but bilateral reconciliation: thus people often talk of *ku khumc-jana*, to beg pardon of one another, to become reconciled. If A., to whom B. has lent her pot, breaks it, A. should send an old woman as conciliator (*mukhumedi*) to express regret and to ask forgiveness. But the *mukhumedi* figures in every conceivable kind of case, whether or not amenable to the courts: in homicide and adultery settled out of the *khoro*; in breaches of etiquette, such as bad behaviour of a bridegroom on his courtship visits, which cannot be submitted to the *khoro*; in disputes already before the *khoro*. It is not necessarily the wrongdoer, objectively considered, who should initiate the procedure: an illtreated wife who runs away to her parents must be sent back with a *mukhumedi*. Nor will the *khoro* necessarily order the guilty party to *khumchua*: he who must beg pardon is the junior, or the person of inferior rank.

The great province of *ku khumchua* is in family and kinship disputes, only a small proportion of which ever reach the *khoro*. The group of people concerned as a family council is determined by cultural arrangements. A quarrel between a father and son of one of his wives is the immediate concern of that house alone; no one else, not even the father's brother or a co-wife, may intervene; but the cattle-linked sister who built the house with her cattle presides and 'cuts' the case. A brother of that sister may be called in, but it is not necessary, and in any case he may only advise if his opinion is asked. If the matter concerns a wider circle, others may be called in; it is impossible to lay down general rules, since on the one hand, each cultural complex (e.g. marriage or inheritance) implies a different set of interested persons and, on the other, each case has its peculiar aspects. The marriage of the daughter of a house is, as regards its obligation to a cattle-linked house, the concern primarily of that house, but if the daughter is to be married to a stranger the mistress of the cattle-linked house must be consulted. If co-wives quarrel, their differences are the concern of the houses concerned, but if one of the wives has bewitched the other, the husband is a mere spectator as regards the arrangements that may be made between the parents of the co-wives; and even in a *khoro* case, it is not the husband, but the parents who are the parties who may be ordered to *khumejana*.

Ho khumejana may be likened to compounding a wrong, but it clearly has much deeper significance: it may be ordered by the *khoro*, alone or in addition to restitution; and it is quite irrelevant whether the wrong is amenable to the court. There is no wrong that cannot be submitted to this procedure. Though theoretically 'A dog which eats another cannot grow fat' (*i.e.* a murderer must always be killed), *ku khumchua* is in practice always possible, for 'He who kills another kills his brother-in-law' (*i.e.* if the victim's kin agree, the homicide may be made good by a full *munyanale* or a daughter or sister). In modern practice, most interesting cases have arisen. In one case some years ago the murderer, who had killed his victim for medicine, a heinous crime, offered his sister in marriage to the victim's elder brother; the investigation by the European authorities failed; and to-day there is a child of the marriage, and permanent links between victim and murderer because, on the pattern of

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bride and cattle exchanges, they have become cattle-linked kin. The handing over of a bride or of *mavyusalo* may supplement the supposedly inadequate punishment meted out by European courts, or *oe* in substitution for the penalty such courts would have imposed if the parties had given away the facts. There is no payment to the queen, no trial, only *ku khumelwa*. The bride is not returned, as is reported in the case of other tribes, when she has borne a child in the lineage of the victim. In 1938, when the sons of A. and B. were herding together, A.'s son pushed a large rock which rolled over and accidentally killed B.'s son. A. sent a *mukhomedi*, but B. refused to accept a mere apology; he wanted 'something to wipe away his tears'. Eventually he accepted four head of cattle, which were brought to the *khoro* of the district head and there handed to him. A little later A. demanded back his cattle, saying that he had lost too much and hoping that publicity would frighten B.; but A.'s object was defeated by a device which we cannot describe here except to say that it was as cunning as it was effective.

Ku khumelwa is the predominant procedure in the districts, and everywhere it is considered especially appropriate to adultery, damage to crops, and 'blood' cases or bodily assaults; it is often the only permissible procedure in family disputes; and it is praiseworthy in theft cases. It may involve an elaborate series of acts, to some features of which we may refer. In one case a wife had committed adultery, and when the husband, after the birth of the child, had discovered the identity of the adulterer, he sent his wife to him. The adulterer, as is customary when he admits his wrong, sent the wife back with the 'goat of [illicitly] meeting one another', which he had borrowed from a neighbour. The goat was killed and the husband gave his erring wife the back leg, the portion that really belonged to him, which was an unusual humiliation. The wife went to an old woman, who took her back to beg pardon on behalf of the wife and to say that the adulterer would later send a cow with his own *mukhomedi*. The procedure in adultery or seduction is not rigid, but essentially the injured husband or the father sends a messenger to adulterer or seducer, who, if he admits the accusation, sends back his *mukhomedi* with an offer of settlement; negotiations may continue for some time and the culprit may be let off lightly, in many cases only a goat being exacted, though, to avoid publicity, more than the usual compensation may be paid. In 'blood' cases *ku khumelwa* strikingly benefits both assailer and victim. In theft, the offender must offer the thing stolen plus a goat or even a head of cattle 'of causing [the thing] to come back'. Mudiwa, living at the capital, one day found that some of his pumpkins had been stolen in a field at Khikhudini. A little later he met a woman who, caught with some pumpkin leaves as she came from the field, admitted her guilt. Mudiwa reported to the district head at Khikhudini, who arranged that the parties met him at the woman's home to discuss the matter. There she offered a pig as pardon. Mudiwa accepted, told her to sell the pig and give him 10*s*. The proceedings were more or less private, those present being only Mudiwa, the woman and a relative or two, and the district head, in the role technically as judge, but really as *mukhomedi*. If the matter had been between residents of the same district, the intervention

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of the district head would have been unnecessary; but very frequently he acts as *mukhomdi* in these cases.

Ho khumelwa is the only proper initial procedure in cases of damage to crops. The owner of the cattle is called to see the damage, begs pardon with a goat, and is told to strengthen his cattle kraal. If depredations continue, he may be taken to the *khoro*. To omit the preliminary procedure of *ho khumelwa* is not necessarily fatal, but is regarded as being revengeful and nothing is abhorred more than revenge. If the man whose crops are damaged refuses reconciliation and makes the owner of the cattle 'pay' instead of allowing *ho khumelwa*, the owner will, it is said, seek an opportunity to revenge himself, and the saying that applies is: 'It is the blow that follows, not the first blow, that hurts.' The saying is, however, of general application and is invoked in regard to any injury or wrong. Practice differs in the various districts as regards *ho khumelwa* for damage to crops, and when a man is resident in one district and has his fields in another, very interesting conflicts of jurisdiction and law sometimes occur, but we cannot stop to consider them.

After formal complaint—that is, after a case is 'in the *khoro*'—*ho khumelwa* may, according to the circumstances, either end the matter or be treated as a confession of guilt (*dama mulodo*) by plaintiff or *khoro*. *Dama mulodo* is a term used also outside the *khoro*. If the owner of cattle continues to be careless after several warnings, he may find that his goat of reconciliation will be regarded, not as a goat of begging pardon, but as a confession of guilt, and the victim will exact what he considers to be the real damage. To accept pardon stops *khoro* proceedings, and if after *dama mulodo* the culprit makes good what the victim demands there also can be no *khoro* trial; but if he does not, the offer of pardon is a confession, not conceived as having been made without prejudice, but admissible in evidence. More often *dama mulodo* refers to a goat which the defendant offers in the *khoro* in settlement and apology. The circumstances, especially the attitude of the plaintiff and the previous history of the case, will then determine whether the matter ends there. The *khoro* may say, 'This is your *dama mulodo*; now pay the ox which in our [or the plaintiff's] opinion fits the offence.'

Examples of *dama mulodo* are difficult to give as a long history is involved and, to understand them, we should have to refer to details of the culture which are not dealt with in this book. But it may be possible to simplify for presentation here the case of *Mabula* v. *Magusha*, though it lasted six months in the *khoro* of the capital alone. These two women were co-wives of Khidzi and were entangled in one of those polygons of jealousies arising in polygyny which are the counterpart of the eternal triangles of our monogamy. The co-wives quarrelled and fought about their extra-marital lovers, and Magusha bit Mabula on the lip. When the wound refused to yield to treatment it was said to be due to the 'bad tooth' of Magusha, who, it was suspected, must be a *lukepe*, a person who had been allowed to live though her upper teeth had appeared before the lower. Having vainly appealed to her husband to order Magusha's teeth to be scraped for medicine, Mabula complained to her parents. After much manœuvring in order to avoid being drawn into the conflict,

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627 691 the mother and the brother of Mabula went to the parents of Magɔɔha, who, however, refused to allow the scraping of their daughter's teeth on the grounds that it implied that they were witches.

When the matter came before the *khɔɔ*, the view was taken that, 'If a dog bites you and the wound festers, it is not wrong to ask the owner for a hair from its tail': you are not imputing witchcraft and it does not matter that the hair or scrapings may have no healing virtues, the important matter being willingness to help. Many side issues emerged, especially as to whose responsibility was the scraping of the teeth: the husband's or the parent's. Once Mukugoloi, Magɔɔha's father, by escaping from his village, evaded the attempt made by Mabula's elder sister to scrape Magɔɔha's teeth. There were at times recriminations in the *khɔɔ*, which showed that the *munyumalo* links were about to be broken. 'If you no longer care for us,' said Mukugoloi, 'I shall pay Mabula's parents'; but Khidai replied, 'What kind of ill-bred woman is that daughter of yours, who is pregnant by a lover, and swears at me by the things inside my trousers. My cattle have provided wives for two of your sons and only I of all your sons-in-law have "gates" in your village.' An old man interjected, 'The jealousies of the child are settled by its parents. Khidai is not responsible. You, Mukugoloi, must *khumchua*.' A week later Mukugoloi offered a goat of reconciliation. But the *khɔɔ* said, 'No. This goat is *duma mulodu*. We now want you to bring an ox, because the father of Mabula has come to you often to ask you to *khumchua* and you refused.' And the father added, 'Yes, I came also to the *khɔɔ* (a distance of eight miles) for eighteen weeks, but you did not turn up. Can I "work" eighteen weeks for merely a goat?'

Mukugoloi consented to pay, but urged that he had a case against Khidai, who should have prevented the drawn-out proceedings by settling it. That was another matter, said the court, for 'The kidneys of an elephant cannot be harnessed together' (they are, like two cases, too weighty to be dealt with at the same time). We may doubt whether it was wise, in view of the polygon of conflicts, to treat as *duma mulodu* the goat offered in reconciliation, but in these matters the *khɔɔ* is generally wiser than we are.

692 *Ho khumchua* and its elaborations lead us to consider the procedure in the *khɔɔ*. The conceptions are interwoven, but a *khɔɔ* trial is regarded as essentially different from the quasi-judicial procedures. It is public, unlike *ho khumchua*, and it starts with *ho ɠalia* (a formal complaint to an officer of the court); there are 'opening' and 'closing' fees and compensation or restitution (*mulefu*); and the constitution of the *khɔɔ* is not based on alinements of interested parties. Before *ho ɠalia*, there is no *khɔɔ* case; the matter is private. *Ho vela*, privately to ask a debtor to pay, precedes but does not necessarily lead to *ho ɠalia*; it may end in *ho khumchua*. But *khɔɔ* trials and settlement in the family or by reconciliation out of court do not differ from one another as regards the sanction of force; both rely upon consent. Because the *khɔɔ* is public, contempt of its authority may be punished, but the humiliation of the offender is a means rather of inducing him to consent than of enforcing a judgement; we have never seen it applied as an alternative to paying the

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confidence in the *Mowo* and its methods, but some men increasingly resort to a mixture of the supernatural, the 'sending back' of the evil, and the processes of the European courts.

'Blood' cases and disobedience to tribal authorities, as well as witchcraft, are dealt with by procedures essentially different from those so far described. Homicide, especially accidental killing (*gwai*), is usually restituted by *ku khumchwa* and by converting the criminal to a kinsman, without the intervention of the *Mowo* or payment to the queen. But other procedures were also used: a murderer might be killed in the heat of the moment by a relative of the victim, and in such a case that ended the matter; or he might be executed by order of the queen unless he could escape to one of the recognized sanctuaries in the country; or he might be dealt with as a witch. Homicide in its manifold aspects is too large a subject for treatment here, but since it is, in regard to aspects of law dealt with in this book, adequately illuminated by our next subject, viz. procedure in 'blood' cases, we may content ourselves with the remark that homicide apparently did not involve a *Mowo* trial.

'Blood' cases to-day present a curious mixture of different procedures of the past. One old element of the procedure, being incongruous with the disapproval of self-help, has completely disappeared. Old men told us that 'blood' cases were settled by the kin, not submitted to the *Mowo*. That, but no doubt also the reluctance to appeal to the European, to-day explains the emphasis on reconciliation and the encouragement of *ku khumchwa* in these cases. If a 'blood' case comes to the *Mowo*, the victim gets nothing and the assailant pays heavily; if the matter is privately settled, the victim gets something and the assailant pays less. In the old days, if private settlement failed, the kin of the victim went to attack the assailant's village: they reported to the queen, but she exacted no fine if in the attack a man was killed. Though this method of execution is unknown to-day, it is still said that a man who kills an aggressor pays nothing, not even to the queen, for 'He who dies on the road is not to be cried for. Let the aggressor kill himself' (*mufo-dzilowi a u lilwi, mulala a dzidzidi*). This precept is also invoked to justify 'revenge' by means of medicines, but here, as in the case of aggression, it is regarded as self-defence, not self-help, just as killing an adulterer caught in the act—in which case also no blood-money is paid, even to the queen—is thought of as killing a thieving dog. These conceptions leave intact the aversion from vengeance: there is no blood revenge, no vendetta, no trace of the *lex talionis*, though a limb for a limb is known not very far off. Self-help, even in cases where it is admitted among tribes with more highly developed legal institutions, is frowned upon: one may neither kill a pig of another that damages one's crops nor drive cattle that have entered one's gardens into the fields of their owner. A man, provoked or assaulted by another, has no right to retaliate; and it is doubted whether the provocation will mitigate his offence, for no man may take the law in his own hands. Phadzili's relative had been killed by Magwale's sorcery, and in anger Phadzili struck Magwale's cow, which subsequently went lame; yet he was ordered by the *Mowo* to pay the usual compensation.

How has the old procedure merged with the new conceptions? We

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692 can give only part of the answer. The exaggerated abhorrence of self-
682 help and the insistence upon *ku khomelwa*, side by side with the
627 tendency to regard blood as belonging to the queen (phrased as
'the head belongs to the chief'), has not driven the old procedures wholly
out of the field. Old men say that 'blood' cases cannot be submitted to
the *khoro*, yet they are second in number to *manyonolo* cases. In theory,
the procedure is that the victim, having notified his district head, runs
to show his blood at the capital, messengers (*makhwalo*) of the queen are
sent, not to institute an inquiry or conduct a trial, but to collect one goat
from every married man in the district of the victim; and each *lekhwalo*
takes two goats for himself and gives the rest to the queen. We have
never seen this procedure applied in practice; the danger of European
intervention makes it wholly impracticable. Instead, the wounded
person reports immediately to the district head, sometimes to the queen,
or if the wound is not serious the parties settle the matter by *ku khomelwa*.
The district head often arbitrates successfully; but he can neither try nor
fine nor exact court fees. If the victim goes to the queen, she sends a
lekhwalo (and often more than one) who exacts one goat (the 'fee of the
feet') from the assaulter and one from the victim (the 'stick for roasting
meat') and should he settle the matter informally, for he cannot conduct
a full-dress trial, he receives one further beast (the fine) from the wrong-
doer. The latter is given to the queen; the goat given by the victim is
killed for the *lekhwalo*, who takes a hind leg to the queen's *khoro*, where
it is eaten chiefly by the councillors; and the victim gets nothing. But if
the *lekhwalo* fails in his mission, which in practice means that the assaulter
refuses to submit to him or denies his guilt, he is summoned to the *khoro*
at the capital. There is no 'opening' fee, for 'blood' opens the *khoro*;
sometimes the parties are ordered to settle the matter between themselves
and sometimes the offender is fined one head of cattle, which goes to the
queen, and one goat, which is killed for the *khoro*. Sometimes, however,
a victim reports to the queen merely to obtain a letter to the Native
Commissioner.

692 These general principles are subject in individual cases to many
683 variations which reflect the transitional nature of the procedure and the
adjustments that are being made by the society. We have been able to
observe the cases that came before the *khoro* far more closely than those
settled privately. In one case where a father intervened in a fight between
his son and his son's wife, the son in anger stabbed the father; the *khoro*
ordered the parties to become reconciled by *ku khomelwa*, the son to beg
pardon with a goat. In similar circumstances, where a stranger inter-
vened, the husband was ordered to clear the grass in the queen's garage.
In another case the husband wounded the mother of a youth whom he
found with his wife, because the mother interfered in the ensuing quarrel
between the husband and the youth; the *khoro* told the youth to beg
pardon with three goats but fined the husband one head of cattle and one
goat. While the *mwiyajani* (whistling ancestors) were performing at a
religious ceremony, one of them, very much intoxicated, blew his whistle
in public and tried to drag one of the women away to the bush. A
district head, an initiated man, forcibly ejected the offender, who next